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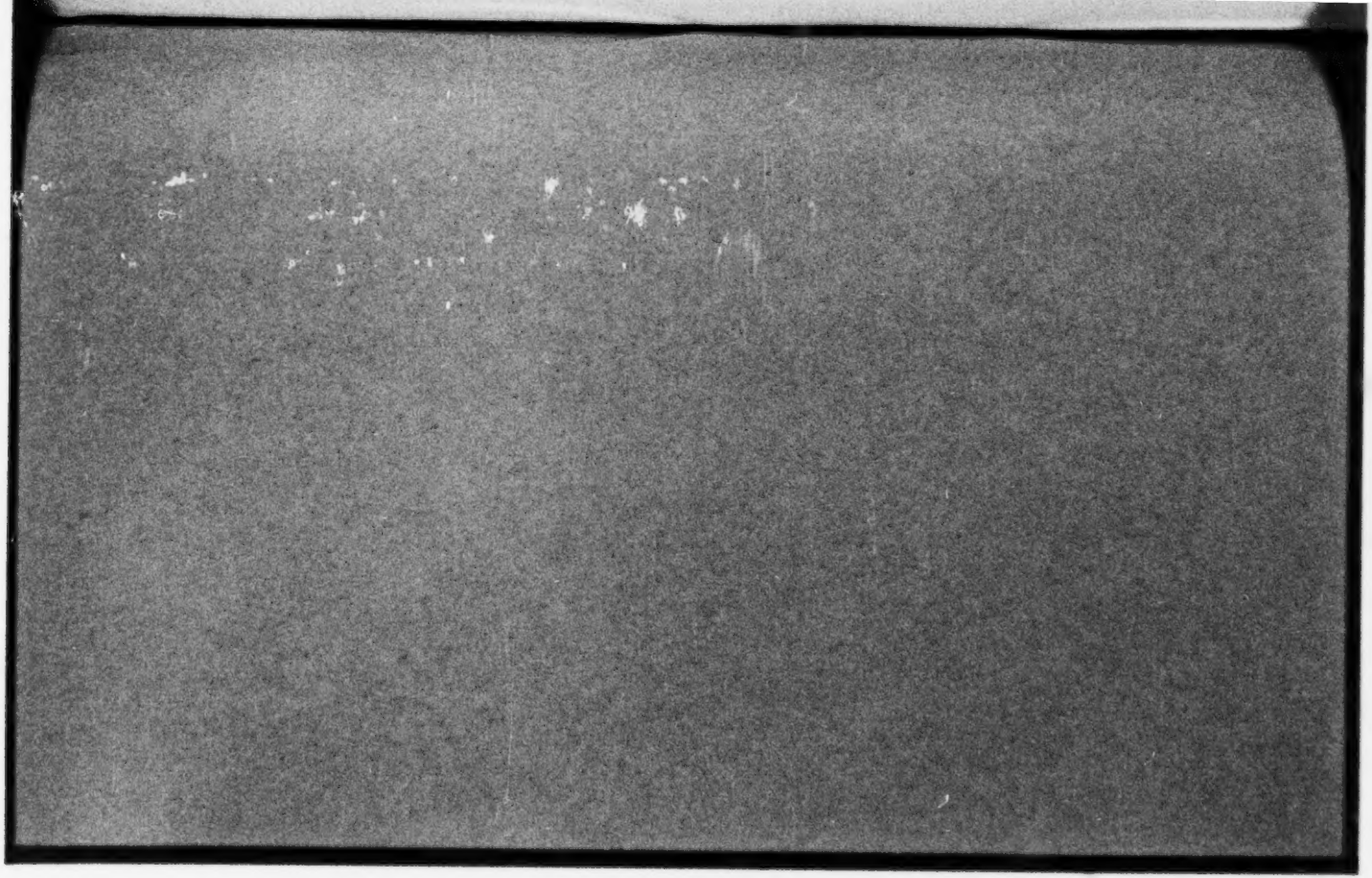

(31,801)

Reply Brief of Plaintiff in Error.

Supreme Court of the United States

OCTOBER TERM 1926

No. 326

JOHN H. ROCHE, PLANTIFF-IN-ERROR

vs.

D. K. McDONALD

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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There is little to be noticed in the brief of McDonald.

McDonald's brief on page two contains this statement: "The statement of the case made in the brief for Roche gives no information concerning the nature of the controversy involved, so we submit a complete statement." The statement made by plaintiff in error is certainly clear to a man of ordinary understanding. Counsel for McDonald entertains the opinion that because McDonald lived in Washington for thirty (30) years that service of process upon him in Oregon while he was temporarily within that state did not give the Oregon court jurisdiction over his per-

son. We respectfully submit that counsel is wrong about this.

It is beyond our comprehension how the fact of McDonald's residence for more than a quarter of a century in Washington could affect the validity of a judgment rendered in Oregon upon personal service of process on McDonald. It is also non-understandable by us how the fact that McDonald had no property in Oregon could affect the validity of the judgment rendered in the Oregon court against McDonald. This seems to be all of the additional statement of the case made by McDonald.

There is no evidence to support the finding of the Superior Court in the State of Washington that the sole purpose of Roche in suing upon the Oregon judgment was to evade the Washington statute relating to the duration of judgments.

This court will determine for itself whether there is anything in the record which shows any evidence supporting any such finding.

Harris vs. Balk, 198 U. S. 215.

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In any event the public policy of the State of Washington was not contravened by Roche bringing action on the Oregon judgment.

The purported additional statement of the case made by McDonald is found on pages 2, 3 and 4, of his brief.

At page five (5), McDonald's brief is the following:

> "The Oregon court was without jurisdiction to render the judgment in suit. Under the laws

> of Washington, a judgment rendered by this court ceases to exist at the expiration of six years from its rendition, and any judgment rendered on it after that time is void."

The statute referred to in McDonald's brief is as follows:

> "No suit, action or other proceedings shall ever be had on any judgment rendered in the State of Washington by which the lien, or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the original judgment." Remington's Compiled Statutes, 1922, 460.

This statute clearly refers only to judgments rendered in the STATE OF WASHINGTON.

In the case of *Burman vs. Douglas*, 78 Wash. 395, the last paragraph is as follows: "Counsel for the appellants contends that this case comes within the rule in the case of *Lilly-Brackett Co. vs. Sonneman*, 50 Wash. 487. That was an action upon a *foreign judgment* and was brought well within the six years; even if this statute may be held to apply to *foreign judgments, which it clearly does not*, this case is not controlled by that case nor by the more recent case of *Catton v. Rechling*, Ante. page 187."

This action is not brought upon a Washington judgment; it is brought upon a judgment of a sister state, to-wit: A judgment of the State of Oregon. The above statute upon which McDonald places such great reliance to defeat the plaintiff in error has no application.

In our opening brief we cited a number of opinions

in this court holding that a judgment of a sister state cannot be attacked collaterally when sued on in another state. In addition we cite the case of *U. S. vs. California and O. Land Co.*, 1-2 U. S. 355: "A judgment is conclusive as to all the media concludendi; and it needs no authority to show that it cannot be impeached either in or out of the state by showing it was based upon a mistake of law."

McDonald asserts that the Oregon judgment is fraudulent. The record does not disclose the semblance of any fraud on the part of Roche in securing the Oregon judgment. A foreign judgment will be assumed to have been rendered in a court of competent jurisdiction upon regular proceedings after due notice and to be untainted with fraud. *Hilton vs. Guyot*, 159 U. S. 113.

Finding Number 6, made by the Trial Court is as follows:

> "Whatever plaintiff's purpose may have been in suing in the State of Oregon and taking the judgment, the course pursued by him since, is consistent only with the purpose and intention of evading the statute of this state upon the life of a judgment and of obtaining an extension for another six years of the judgment rendered in this court against the defendant." See transcript of record, page 9.

There is nothing in this finding that in any manner impughn's the motive of Roche in bringing the suit on the Washington judgment in Oregon. Whatever his conduct may have been after obtaining the judgment does not show that Roche obtained the

judgment for the purpose of evading the statutes of this state. The purported finding of the court set out above is not a finding but at best, is a conjecture and a conclusion. This finding or conclusion has no support in the evidence adduced upon the trial. See Transcript of Record, pages 12, 13, 14, 15 and 16.

McDonald in his brief says that the Oregon judgment was rendered by default. It is admitted that McDonald appeared in the action; that he demurred to the complaint; that his demurrer was over-ruled; that judgment was thereafter rendered against him. The judgment rendered in Oregon against McDonald is not purely a default judgment. Even if it be classed as a default judgment it is just as binding on him as if the judgment had been rendered upon a trial.

In *U. S. Ex. Rel. Harshman vs. County Court*, 122 U. S. 306, it is held: a judgment is not less conclusive because rendered by default; also in case of *Last Chance Mining Co. vs. Tyler Mining Co.*, 157 U. S. 683, it is held: a judgment by default is just as conclusive an adjudication between the parties of whatever is essential to support the judgment as when rendered after answer and contest.

In the case of *Philbrick vs. O'Connor*, 15 Ore. page 15, it is held that:

> "Judgment by default, after service of Summons and Complaint, and failure to answer admits the truth of every material allegation in the Complaint."

McDonald's demurrer in the Oregon court admitted all of the allegations of the complaint in the Oregon suit on the Washington judgment. It ad-

mitted that the Washington judgment was a valid, unsatisfied and subsisting judgment. It was the duty of McDonald, if he had any defense to the Washington judgment when sued on in the State of Oregon, *to present such defense in the Oregon court;* failing to make such defense the judgment of the Oregon court is *res judicata* when suit is brought in the State of Washington on the Oregon judgment.

See *Crowley vs. Baumgartner,* 114 Wash., at page 195:

> "The Idaho court was one of general jurisdiction. It had jurisdiction of the parties and of the subject matter, and after it had found against the defendant and entered its solemn judgment to that effect, the courts of this state, under the full faith and credit clause of the Federal Constitution, may not permit the defendant to again try the case on its merits nor permit the wife or anyone else in his behalf to urge again the defenses which had been foreclosed by the judgment of the Idaho court."

See also *Harju, respondent vs. Wm. Anderson, et al., defendants, Elinor W. Anderson, Appellant,* 133 Washington 506:

> "The Circuit Court of Clatsop County had jurisdiction of the persons and of the subject matter of the litigation before it. It had jurisdiction by personal service upon the appellant and it had jurisdiction under the law to entertain a suit for judgment upon a judgment already obtained in another jurisdiction, and in such a suit the judgment debtor had a right to interpose as a defense against that action, the fact that the foreign judgment upon which the suit was being prosecuted was void for the reason

that no service of Summons and Complaint in the original action had been made. This is the law, both of this state and of Oregon. Murray vs. Murray, 6 Oregon 17; Aultman Miller & Co. vs. Mills, 9 Wash. 68. He having a right to interpose that defense a judgment in that action would be res judicata as to it if it was in issue. It was proper for the respondent in the Oregon case to include in his answer, as he did, if there had been no service of Summons and Complaint in the action begun in Washington. The Oregon Court allowed that defense to stand in the pleading. It was therefore an issue in that action and the determination of the action determined that issue. It is true that respondent did not appear at the trial, but that does not render any less binding upon him the judgment of the Circuit Court of Clatsop County afterwards affirmed by the Supreme Court of Oregon. That judgment was res judicata as to all things which were, or could have been, litigated in that proceeding under the pleading. The question of whether or not there had been service in Wahkiakum County in the Washington action was a matter which was an issue in that case, and the judgment in that case determined that there had been service and is binding upon parties to that litigation who are the two parties to the litigation before us."

The judgment rendered in the Oregon Court against Anderson was held to be res judicata notwithstanding the fact that Anderson was never served and had no notice of the suit brought against him in Cowlitz County, Washington.

The Supreme Court of Washington endeavors to sustain its opinion by the case of *Public Works vs. Columbia College*, 17 Wallace 521.

There was no jurisdiction in this last named case

over some of the defendants, therefore, when that judgment was sued on in another state the other state did not have to give said judgment full faith and credit as to the defendants not served. In this case McDonald was served; he also appeared in the action. The other case cited by the Supreme Court of Washington to sustain its decision, is *Henry F. Reynolds et al, Plaintiff in Error vs. Robt. F. Stockton*, 14 U. S. 254.

In the last cited case, other and different relief from that asked in the Complaint was granted. Of course, this judgment was void in the state where rendered, therefore it could not be given full faith and credit when sued on in another state.

The above cases cited by the Supreme Court of the State of Washington are no authority to sustain its decision.

McDonald in his brief at page 29 cites the case of *Andrews vs. Andrews*, 188 U. S. 14. The court of South Dakota that rendered its decree of divorce to Charles S. Andrews was without jurisdiction for the reason the plaintiff had not acquired a bona fide domicile within said state. This case in no manner aids McDonald.

In the case at bar there was jurisdiction of the person of McDonald and the subject matter of the suit.

At page 7 of McDonald's brief it is stated that the original Washington judgment was rendered in an action Ex Delicto. This is true, however, whenever

a cause of action, in the language of the law, transit in rem judicatam, and the judgment thereupon remains in full force unreversed, the original cause of action is merged and gone forever. *Hamer vs. New York R. Co.*, 244 U. S. 272.

McDonald, at page 41 of his brief says: "However, among the decisions cited in the brief there are three which may seem, at least superficially, to be to some extent analogous to the present case. These cases are direct and positive authority, which, if followed by this court will necessitate a reversal of this case. Especially, this is true, of the case of *Fauntleroy vs. Lum*, 210 U. S. 230. This case has been reaffirmed by this court a great number of times.

We respectfuliy ask that this cause be reversed and that the plaintiff in error be granted such relief to which he is entitled.

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Spokane, Washington.

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Spokane, Washington.

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IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1926
No. 326

JOHN H. ROCHE, Plaintiff in Error,

vs.

D. K. McDONALD

In Error to the Supreme Court of the State of Washington

BRIEF FOR McDONALD

Foreword.

Review of a decision of the highest court of the State of Washington is sought, and for that purpose the case is brought here by writ of error. The re-

view is sought upon the sole ground that the Washington court denied full faith and credit to a judgment of an Oregon court. The case, therefore, should have been brought here by certiorari. But under §237 (c) of the Judicial Code it appears to be the duty of the Court in such a case to examine the record in order to determine whether certiorari ought to be granted, and as such an examination will necessarily require a consideration of the merits of the case, we merely suggest that the case is not properly here and turn to a discussion of the merits.

The parties will be referred to by their surnames.

Statement of the Case.

The statement of the case made in the brief for Roche gives no information concerning the nature of the controversy involved, so we submit a complete statement.

A statute of the State of Washington, in effect since 1897, limits the life of a judgment to six years, and forbids its extension beyond that period. June 24, 1918, a judgment in an action *ex delicto* was recovered against McDonald in the Superior Court of the State of Washington for Spokane County. Four months before the expiration of the judgment it was assigned to Roche, who is a citizen of the State of Washington, and an attorney who has resided and been engaged in the practice of his profession in Spokane County for more than thirty years. McDonald is also a citizen of the State of Washington, and for

more than thirty years has resided in Spokane County. In a short time after the assignment of the judgment to Roche, he began an action upon it in an Oregon court, and process therein was served upon McDonald while he was temporarily in Oregon. While there is no evidence bearing upon the subject, it was admitted in the State courts that McDonald appeared generally in that cause and demurred to the complaint. His demurrer being overruled, he appeared no further therein. October 1, 1924, more than six years after the rendition of the Washington judgment, the Oregon court rendered judgment upon it as by default against McDonald. McDonald had no property in Oregon, and no attempt was made to enforce the Oregon judgment there, but directly after its rendition Roche began an action—the case at bar—upon it in the Superior Court of the State of Washington for Spokane County. That was the first attempt made to enforce in the State of Washington the original judgment, that of June 24, 1918. McDonald, served with process, answered the complaint, alleging substantially the matters heretofore stated, and averring particularly that Roche knew that he (McDonald) had for more than thirty years been a citizen and resident of Spokane County, Washington, and that he had neither residence nor property in Oregon; that Roche knew that he could not, and did not attempt to, enforce the Oregon judgment in that State, his sole purpose in suing upon the Washington judgment in Oregon being to evade the Washington statute relating to the duration of judgments. The Superior

Court found the facts substantially as stated above, save as to Roche's purpose in suing on the Washington judgment in Oregon. On that subject it found that while Roche claimed that some general, indefinite information had been communicated to him that McDonald owned property in Oregon, he (Roche) did not pursue the subject further before or after bringing suit and obtaining judgment there, and took no steps to enforce the judgment there, doing nothing with the Oregon judgment beyond suing upon it in Washington; that whatever his purpose may have been, the course pursued by him was only consistent with a purpose to evade the laws of Washington relating to the life of judgments. Upon those findings, judgment was rendered dismissing the action. The findings were accepted by the Supreme Court of Washington, the highest court of the State. It affirmed the judgment dismissing the action, holding that at the expiration of six years from its rendition the Washington judgment sued on in Oregon became extinct and ceased to exist as a cause of action; that it is a fundamental principle that a default judgment is void which is unsupported by a pleading stating a cause of action; and that the Oregon judgment was therefore void, since the complaint upon which it was rendered stated no other cause of action than the Washington judgment which had become extinct before the rendition of the judgment thereon. It is this decision of the Supreme Court and the judgment entered thereon which are sought to be reviewed here.

The facts above stated appear from the complaint (Record, pp. 1-2), answer (pp. 2-6), reply pp. 7-8), findings of fact and conclusions of law (pp. 8-9) and the opinion of the Supreme Court (pp. 16-23).

The opinion of the Supreme Court of Washington in this case is reported as *Roche v. McDonald,* 136 Washington, 322.

Summary of the Argument.

First. The Oregon court was without jurisdiction to render the judgment in suit. Under the laws of Washington, a judgment rendered by its courts ceases to exist at the expiration of six years from its rendition, and any judgment rendered on it after that time is void. The Washington law becomes a part of any judgment rendered by its courts, and accompanies such judgment into any jurisdiction where it may be taken. When the judgment in suit was rendered by the Oregon court, the Washington judgment which was its sole foundation had ceased to exist. The Oregon court was without jurisdiction to render judgment on the extinct Washington judgment for two reasons: (1) The Constitution does not permit a State court to give greater effect to a judgment of a court of a sister State than is given to it in the State where it was rendered. (2) The judgment sued on was rendered by default. A default judgment which is not supported by a sufficient cause of action is void. When the Washington judgment expired, before the rendition of the judgment in

suit, no cause of action remained to support the latter judgment.

Second. The judgment in suit could be impeached in the courts of Washington upon any ground which would render it vulnerable in the Oregon courts. Judgment cannot be rendered upon a judgment from the courts of another State which is not virile and enforceable in the State where it was rendered. McDonald could have enjoined enforcement of the judgment in suit in Oregon, and may therefore defend against its enforcement in Washington.

Third. Because the Oregon judgment was procured for the purpose of evading the laws of Washington, it was a fraud upon those laws. Washington could deny to its citizen, Roche, the benefit of his fraud upon the laws to which he owes obedience.

Fourth. Eliminating the question of fraud, in the exercise of a sound public policy a State will not permit its citizens to resort to the courts of another State for the purpose of obtaining advantages to which they are not entitled under the laws of their own State, and depriving fellow citizens of the protection given by those laws.

Fifth. Counsel for Roche misconceive the nature of the questions presented, and the authorities cited by them are inapposite.

I. Want of Jurisdiction in the Oregon Court.

It is admitted that the sole cause of action pleaded by the plaintiff in the Oregon action was the Washington judgment rendered in June, 1918, and that it was the sole foundation for the judgment rendered by the Oregon court (Record, pp. 2-7). The original Washington judgment was rendered in an action *ex delicto*. It follows that the obligation upon which judgment was rendered by the Oregon court was in no sense contractual, but arose solely from and depended for its existence upon the Washington judgment. *Louisiana v. New Orleans*, 109 U. S., 285, *Freeland v. Williams*, 131 U. S., 405, *Morley v. Lake Shore Ry.*, 146 U. S., 162.

Whether there was anything upon which the Oregon court could act, whether there was any cause of action upon which it could render judgment, depended on the laws of the State of Washington. Those laws created courts authorized to render judgments and provided for the rendition of judgments, their incidents and effect. Necessarily, therefore, the existence and extent of the judgment depended on the Washington laws. A judgment "is the creature of statute, owing its life and force entirely to legislation." *Jeffrey v. Moran*, 101 U. S., 285-287.

> "A judgment is purely statutory. Its very existence and the rights of the judgment creditor are and must be measured by the statute creating it. It begins, continues, and terminates at the will of the Legislature."
>
> *Sullivan State Bank v. First National Bank* (Ind.), 146 N. E., 403, 405.

The validity of a judgment, its effect, its very existence, are determined by the statutes in force in the State in which and at the time it was rendered. 33 Corpus Juris, p. 1064, §21 and cited cases.

In providing for the rendition of judgments, the Washington statutes prescribed the term of their existence. So far as concerns the present case, that prescription is as follows:

> "After the expiration of six years from the rendition of any judgment it shall cease to be a lien or charge against the estate or person of the judgment debtor.
>
> "No suit, action, or other proceedings shall ever be had on any judgment rendered in the State of Washington by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for any greater or longer period than six years from the date of the entry of the original judgment."
>
> Washington Laws 1897, p. 52; 1 Remington's Compiled Statutes 1922, §§459, 460.

It has been uniformly held by the Supreme Court of Washington that this statute is not one of limitations, but affects the life of the judgment, and that after the expiration of six years from its rendition a judgment rendered by a Washington court ceases to exist and can be continued in effect no longer. *Bettman v. Cowley*, 19 Washington, 207, *Burman v. Douglas*, 78 Washington, 394, *Ball v. Bussell*, 119 Washington, 206. In *Palmer v. Labaree*, 23 Washington, 409, it was said (p. 416):

> "The legislative intent expressed in this act not only sought to destroy existing judgments,

but the act was intended to deny any remedy whereby existing judgments could be extended."

In the present case, it was held that the effect of the act is to completely destroy a judgment at the expiration of six years from its rendition, and to forbid any relief thereon or any extension of its life beyond that period by any form of action, proceeding or process. The extinction of a judgment at the end of the statutory period of its life is so utter that a judgment rendered thereon after the expiration of the six-year period would be void and of no effect (Record, pp. 16-23). *Roche v. McDonald*, 136 Washington, 322.

It is fundamental, of course, that when recovery is sought upon a foreign obligation the existence and extent of the obligation must be determined by reference to the foreign law. When the plaintiff bases his case upon the foreign law, the defendant is entitled to the benefit of any limitation upon his liability which is imposed by the foreign law. *Slater v. Mexican National Ry.*, 194 U. S., 120, *Cuba Railroad v. Crosby*, 222 U. S., 473, *Western Union Telegraph Co. v. Brown*, 234 U. S., 542.

It is familiar law that in an action upon an obligation created by a foreign law all that relates to the remedy merely is governed by the *lex fori*. Ordinarily, the limitation upon the time within which an action can be maintained upon a cause of action is determined by the *lex fori*, for ordinarily it pertains to the remedy only. Yet the statute limiting

the time within which an action may be brought may be such as to operate as a limitation of the liability itself, and not affect the remedy alone. When such is the character of the statute, then it is one pertaining to the substance of the liability and not of the remedy, and in such case the *lex loci* and not the *lex fori* controls. *Re Harrisburg*, 119 U. S., 199, *Davis v. Mills*, 194 U. S., 451; *Phillips v. Grand Trunk Ry.*, 236 U. S., 662, *Kansas City So. Ry. v. Wolf*, 261 U. S., 133, *William Danzer Co. v. Gulf Railroad*, 268 U. S., 633. Noting the distinction between matters respecting the remedy which are governed by the law of the forum, and matters affecting the substance of the cause of action, as a statute which not only bars the remedy but destroys the liability, see *Central Vermont Ry. Co. v. White*, 238 U. S., 507, 511.

Under the decisions of the Washington Supreme Court, particularly the decision in the present case which holds that a judgment rendered upon a previous judgment after the expiration of that judgment is void, there can be no doubt that the Washington statute goes to the substance of the right of action, and that in an action upon a judgment the existence of the judgment is a matter essential to the jurisdiction. That is in accordance with the general rule in dealing with a statute which not merely forbids an action upon a particular liability after a stated time, but also destroys the liability. Thus in the case of *Finn v. United States*, 123 U. S., 227, a statute provided that every claim against the United States cognizable by the Court of Claims should be "forever

barred" unless an action was begun within a stated period. It was held that when a claim was barred by failure to begin an action within the stated period it was the duty of the court to dismiss the petition whether the limitation was pleaded or not, inasmuch as the statute made it a condition or qualification of the right to a judgment that the action be begun within the stated period. In *Louisville Cement Co. v. Interstate Commerce Commission,* 246 U. S., 638, 642, this Court considered the provision of the act to regulate commerce which required that all complaints for the recovery of damages should be filed within two years from the time the cause of action accrues and held that such provision "is not a mere statute of limitation, but is jurisdictional—is a limit set to the power of the Commission as distinguished from a rule of law for the guidance of it in reaching its conclusion." In *United States ex rel Rauch v. Davis,* 8 Fed. (2nd), 907, it appeared that an action was brought against the director general of railroads in a New York court after the time fixed by Congress within which such actions could be brought. A judgment was rendered therein, and the director general refusing to make payment thereof, a writ of mandamus was sought in the Supreme Court of the District of Columbia to compel him to pay. In denying the writ, it was held that the limitation of time operated as a condition of liability, and that as the action in which the judgment was rendered was not brought within the prescribed period, the judgment was void and was not entitled to consideration in

any court. Certiorari was denied in this case in 270 U. S., 653.

Stated in another way, the doctrine of the courts is that if under the *lex loci* no right of action was created, or if none there exists, then none exists anywhere, and none can be prosecuted in another jurisdiction. *Osborn v. Grand Trunk Ry.* (Ver.), 88 Atl., 512, 514. The doctrine was thus stated in *Pender v. Machine Co.* (R. I), 87 Atl., 1, 2.

> "If under the lex loci there be a right of action, comity permits it to be prosecuted in another jurisdiction; but if under the lex loci no right of action is created or exists, then it exists nowhere and can be prosecuted in no jurisdiction."

See also *O'Reilley v. Railroad Co.* (R. I.), 17 Atl., 906, *Dennis v. Railroad Co.* (S. C.), 42 S. E., 869.

It follows from the foregoing decisions that the act of the Oregon court in rendering judgment upon a Washington judgment had ceased to exist was in excess of jurisdiction. This appears by either of the following processes of reasoning:

(1) Under the constitutional provision requiring full faith and credit to be given by one State to the judgment of another State, the Oregon court could give no greater effect to the Washington judgment than it was entitled to in the State of Washington.

> "No greater effect can be given to any judgment of a court of one State in another State than is given to it in the State where rendered. Any other rule would contravene the policy of

> the provisions of the Constitution and laws of the United States on that subject."

Public Works v. Columbia College, 17 Wall., 521, 529. To the same effect is *Robertson v. Pickrell,* 109 U. S., 608.

The rule above stated was a limitation upon the jurisdiction of the Oregon court, and when it rendered judgment upon a Washington judgment which, under the laws of that State, had ceased to exist, it exceeded its jurisdiction by giving effect to the Washington judgment when it was not entitled to any effect in Washington.

It may be said that as the Washington law limiting the life of a Washington judgment was not pleaded and proven in the Oregon court, the Oregon court was ignorant of it and justified in assuming that the judgment was in existence when it rendered judgment thereon. It can not be said that the Oregon court was ignorant of the Washington law governing judgments. It was asked to give effect to the Washington laws by enforcing a Washington judgment. Necessarily, it was required to take notice of the Washington laws to the extent of recognizing the judgment. Why was it not also required to take notice of the Washington law which limited the life of the judgment? It was said in *Carpenter v. Dexter,* 8 Wallace, 513, 531, that

> "Where one State recognizes acts done in pursuance of the laws of another State, its courts will take judicial cognizance of those laws so far as it may be necessary to determine the

validity of the acts alleged to be in conformity with them."

However, the Oregon court's ignorance of the Washington law cannot supply a jurisdictional defect. Under the authorities above cited, particularly *Louisville Cement Co. v. Interstate Commerce Commission and United States ex rel Rauch v. Davis*, the limit of life which the Washington law set upon the Washington judgment was jurisdictional and affected the judgment wherever it might be taken. If in fact the Oregon court exceeded its jurisdiction, its ignorance of that fact, indeed, its positive adjudication that it was acting within its jurisdiction, is of no importance. In *Thompson v. Whitman*, 18 Wallace, 457, a sloop was forfeited and sold by order of a New Jersey court for an offense against the laws of that State. The jurisdiction of the court depended upon the commission of the offense and the seizure of the sloop in a particular New Jersey county. The court found that the offense was committed and the sloop seized in that county, and its judgment was based upon those findings. In an action of trespass against the officer making the sale in a New York court, it was held that the plaintiff was entitled to impeach the findings of the New Jersey court and show that the offense and seizure of the sloop did not occur in a county over which the New Jersey court had jurisdiction. In *National Exchange Bank v. Wiley*, 195 U. S., 257, Wiley executed and delivered to the Exchange Bank a note for a large sum of money with a warrant of attorney attached thereto,

authorizing any attorney at law in the United States or elsewhere to confess judgment against him in favor of the *holder* of the note. After the note had become due, an attorney-at-law confessed judgment upon the note against Wiley and in favor of the National Exchange Bank for the amount due thereon, all proceedings thereunder being, on the face of the record, in all respects in accordance with the law of Ohio where the note was executed and the judgment rendered. Suit was thereafter brought upon the Ohio judgment in Nebraska. Wiley set up in defense that at the time the judgment was rendered the National Exchange Bank was not the holder of the note, and that therefore there was no authority under the warrant of attorney executed by him to confess judgment in its favor. It was held that he was entitled to defeat recovery by showing the facts alleged.

It is needless to multiply authorities. The cited cases establish that when, in a suit upon a judgment of a sister State, the jurisdiction of the court rendering the judgment is challenged, the facts establishing want of jurisdiction may be shown notwithstanding any belief or adjudication of the court rendering the judgment to the contrary. Applying the rule to the present case, it is immaterial that the Oregon court believed the Washington judgment was still in existence, and in such belief exercised its jurisdiction by rendering judgment thereon. The *fact* was the essential of jurisdiction, not what the Oregon court mistakenly believed or adjudicated the fact to be.

(2) The Oregon judgment was rendered against

McDonald by default. He appeared in response to process served upon him and demurred to the complaint. His demurrer was overruled, whereupon he appeared no further, and some months later judgment was taken against him by default.

While of no particular pertinence to the theory of the case under discussion, it may be remarked that the demurrer was properly overruled, for, as will be observed under a subsequent head, the Washington statute permitted the maintenance of an action upon a Washington judgment at any time within the six-year period after the rendition of the judgment. The sole prohibition of the statute is upon the extension of the life of the judgment beyond the six-year period by reason of any such action. The Oregon action was begun in March 1924, several months before the expiration of the Washington judgment, and it was consequently maintainable when brought and continued to be so maintainable until the 24th of June 1924, when the six-year period upon its life expired.

Returning to the particular question under discussion, when the Oregon court rendered judgment by default against McDonald, it did so upon a judgment which was extinct, and the fact that it was extinct appeared upon the face of the complaint upon which judgment was rendered wherein was stated the date of the rendition of the Washington judgment (Record, pp. 5-6). There is presented, then, the case of a default judgment rendered upon a pleading which not only stated no cause of action, but also affirmatively showed that under no circumstances could the plain-

tiff recover inasmuch as the obligation upon which he counted for recovery had ceased to exist by operation of the law which created it.

Cardinal principles of the law of judgments are that a default judgment must rest upon a good and sufficient complaint; that if the plaintiff's complaint does not state a cause of action the judgment is unsustainable, and that such a judgment is not aided by presumptions. The record must affirmatively show the existence of every material fact to give the court jurisdiction. 1 Black, Judgments, §§ 84, 93. Therefrom it flows that a default judgment resting upon a complaint which states no cause of action is in excess of jurisdiction, especially when the pleading shows that under no circumstances could the plaintiff recover from defendant upon the obligation counted on.

In *State ex rel First National Bank v. Hastings*, 120 Washington, 283, judgments by default and by consent had been taken against a municipality. The complaints on which these judgments were rendered showed that the obligations counted on were such that under the laws of the State the municipality could not be held liable thereon. A good many years thereafter, the judgment creditors sought writs of mandamus against the officers of the municipality to compel the levying of a tax for payment of the judgments. It was held that the judgments were void because the complaints upon which they were rendered showed that under no circumstances could judgment be rendered thereon. In so holding, it was said:

"We now inquire, Did such a complete failure to show grounds of recovery by the allegations of the complaints upon which these consent and default judgments were entered render the judgments void and of no binding force as against the city? We feel constrained to hold that such was the effect of those wholly defective complaints. It is elementary law that a default judgment cannot award any relief beyond that which the facts alleged in the complaint in the action show the plaintiff legally entitled to. This also means, of course, that if a complaint wholly fails to state facts legally entitling the plaintiff to any recovery, or states facts affirmatively showing that the plaintiff has no right of recovery, as those complaints did, a default judgment rendered thereon is void, just as such a default judgment would be void in so far as it awarded relief beyond what which the allegations of the complaint showed the plaintiff legally entitled to."

A case of similar character is *Mayor, etc., v. Kelly* (Ala.), 55 So., 526.

Reynolds v. Stockton, 140 U. S., 254, involves a similar principle. In that case an action was begun in New York against a New Jersey insurance company, its receiver, and the superintendent of the New York insurance department. The plaintiffs were policyholders in the insurance company, and the purpose of the action was to seize and subject to their claims the securities deposited by the insurance company with the superintendent of the insurance department. The insurance company and its receiver appeared and answered, but participated no further in the case. Judgment was thereafter rendered, subjecting the securities deposited with the insurance department to the

claims of the plaintiffs, and in addition giving a money judgment for a large sum against the insurance company and its receiver. Suit was thereafter brought upon this judgment in the court of New Jersey, and these declined to recognize the validity of the judgment because it exceeded the scope of the pleadings. This Court held that the New Jersey courts were not required to recognize the judgment because it exceeded the relief which was demanded under the complaint. To quote (pp. 265-266):

> "The invalidity of the judgment depends upon the fact that it is in no manner responsive to the issues tendered by the pleadings. This idea underlies all litigation. Its emphatic language is, that a judgment, to be conclusive upon the parties to the litigation, must be responsive to the matters controverted. Nor are we concerned with the question as to the rule which obtains in a case in which, while the matter determined was not, in fact, put in issue by the pleadings, it is apparent from the record that the defeated party was present at the trial and actually litigated that matter. In such a case the proposition so often affirmed, that that is to be considered as done which ought to have been done, may have weight, and the amendment which ought to have been made to conform the pleadings to the evidence may be treated as having been made. Here there was no appearance after the filing of the answer, and no participation in the trial or other proceedings. Whatever may be the rule, where substantial amendments to the complaint are permitted and made, and the defendant responds thereto, or where it appears that he takes actual part in the litigation of the matters determined, the rule is universal that, where he appears and responds only to the complaint as filed, and no amendment is made thereto, the judgment is con-

> clusive only so far as it determines matters which by the pleadings are put in issue. And this rule, which determines the conclusiveness of a judgment rendered in one court of a State, as to all subsequent inquiries in the courts of the same State, enters into and limits the constitutional provision quoted, as to the full faith and credit which must be given in one State to judgments rendered in the courts of another State."

Of similar effect to the foregoing are *Binkley v. Switzer* (Colo.), 192 Pac., 500; *Gile v. Wood*, 32 Idaho, 752.

Notwithstanding the difference in the facts of the two cases, we think the rule in *Reynolds v. Stockton* governs the present case. If a default judgment is void because the relief granted is in excess of that which is demandable under the complaint, by parity of reasoning a default judgment must be void when the complaint upon which it is rendered states no cause of action whatsoever.

It is of course to be borne in mind that rules which might be applicable in a case of a collateral attack upon a judgment in the same court which rendered it are not applicable in an action upon a judgment of a sister State when the jurisdiction of the court rendering the judgment is attacked. Jurisdictional recitals, jurisdictional findings, may not be impeached in the first case while they may be in the second. Therefore it was permissible for McDonald to impeach the implied adjudication of the Oregon court that the judgment it rendered was supported by a cause of action by showing that in truth and in fact there was no

cause of action to sustain it. This is not going so far as was permitted in *Thompson v. Whitman*, by contradiction of the jurisdictional findings of the facts of commission of offense and seizure, and in *National Exchange Bank v. Wiley*, by impeachment of the fact that the bank was the holder of the note upon which judgment was confessed.

To sustain the point here made, we must rely chiefly upon general principles, as we have found no case in the books analogous to the present. *Brown v. Parker*, 28 Wisconsin, 1, is more nearly like it than any other. Two persons executed a promissory note, together with a warrant of attorney for the confession of judgment thereon. The note was executed in Wisconsin, where all the parties resided. The Wisconsin statute limiting the time within which actions might be brought upon promissory notes did not affect the remedy merely, but destroyed the right of action. After the right to sue upon the note had expired in Wisconsin, an action thereon was begun in Illinois, where one of the makers had previously gone to reside, and judgment was entered on the note under the warrant of attorney. Suit was then brought on the judgment in Wisconsin. Mr. Chief Justice Dixon, speaking for the Supreme Court of Wisconsin, held that when the note and warrant of attorney died in Wisconsin, they died everywhere, and that as the Illinois judgment had no foundation, it was a nullity. See also *Baker v. Stonebreaker*, 36 Missouri, 338. Suit was brought in Missouri upon a judgment rendered in Maryland. By operation of the Maryland law, the

judgment had expired before the Missouri action was brought. It was held that there was no cause of action to sustain the Missouri action.

II. Oregon Courts Would Not Have Enforced Judgment; Hence Washington Courts Need Not.

It is fundamental that the judgment of a court of a sister State is entitled to no greater or other effect than it has in the State where it was rendered. When sued upon in another State it is conclusive "except for such causes as would be sufficient to set aside the judgment in the courts of the State in which it was rendered." *McElmoyle v. Cohen*, 13 Peters, 311, 326. Upon the record in this cause, McDonald could have prevented the enforcement of the judgment in Oregon by injunction, or by an equitable defense to the action if Roche had attempted to enforce it by action.

The Oregon law was not pleaded or proven in this cause, and the Court cannot take judicial notice of it. *Hanley v. Donoghue*, 116 U. S., 1. It must therefore be presumed either that it is the same as that of Washington, or that it is that which prevails generally in the United States, as evidenced by the preponderance of opinion of the courts. It is immaterial which alternative is adopted.

The authorities are agreed upon the rule that to maintain an action in one State upon a judgment rendered by the courts of another State, it is essential that the judgment should be a valid adjudication, remaining in full force and virtue in the State where

it was rendered, and capable of being there enforced by final process. Though the judgment be merely dormant, suit may not be maintained upon it in another State. 2 Black, Judgments (2d ed.), §867, 34 Corpus Juris, pp. 1105-6, §1570, and cited cases. It seems that Oregon accepts the rule without reservation. *Levine v. Levine* (Ore.), 187 Pac., 609.

Under statutes permitting equitable defenses to be pleaded in actions at law, a suit on a judgment may be defeated by proof of facts showing that it would be against conscience to allow a recovery on the judgment; provided, of course, the defendant could not have availed himself of such facts as a defense to the original action, or has a sufficient excuse for his failure to do so. 2 Black, Judgments (2d ed.), §979, 34 Corpur Juris, p. 1090, §1542. Subject to the same provisos, a court of equity will enjoin the enforcement of an unconscionable judgment. 1 Black, Judgments (2d ed.), §§ 365, 366, 34 Corpus Juris, p. 444, §698. The circumstances which will render a judgment so unjust that its enforcement will not be permitted are illimitable in character and extent. It would seem, however, that when a judgment debtor does not owe the debt evidenced by the judgment, or has a meritorious defense to the cause of action on which it was rendered, its enforcement against him is unjust, and will not be permitted if he was free from fault in not making his defense in the original action. *Humphreys v. Leggett*, 9 How., 293; *Metcalf v. Williams*, 104 U. S., 93; *Marshall v. Holmes*, 141 U. S., 589; *Rolling Mill Co. v. Ore & Steel Co.*, 152 U. S., 596; *Wells Fargo & Co. v. Tay-*

lor, 254 U. S., 175; *National Surety Co. v. State Bank* (C. C. A. 8th Circ.), 120 Fed., 593.

Bearing in mind that the Washington judgment had ceased to exist before the Oregon judgment was rendered on it as a cause of action, and that suit cannot be maintained in the courts of one State upon a judgment rendered by the courts of another State unless the judgment is in full force and effect and capable of enforcement by final process in the State where it was rendered, it is apparent that the courts of Oregon would not have permitted enforcement of the judgment involved had relief been sought there, provided, of course, a sufficient excuse was offered for failure to make defense in the original action.

McDonald's excuse for failing to interpose the facts appearing in the present case as a defense to the Oregon action is the somewhat peculiar character of the Washington laws relating to judgments. Under them, a judgment creditor may sue upon his judgment at any time during its life. However, no judgment rendered in any such suit can have a longer life than the original judgment. So long as the original judgment lives, a second judgment may be rendered on it, but the second judgment dies with the original judgment, be its life a week, a day, or an hour. *Burman v. Douglas*, 78 Washington, 394; *Ball v. Bussell*, 119 Washington, 206. The Oregon action was brought about four months before the death of the Washington judgment. While the Washington judgment lived, the Oregon action could be maintained, and therefore McDonald's

demurrer to the complaint in the Oregon action, which he interposed when he appeared therein, was properly overruled. Not until the death of the Washington judgment could he properly plead the facts appearing in the case at bar, and demand dismissal of the action. But he was obliged to dance attendance upon the Oregon court until the time should arrive when he could make a defense to the action. He was a resident of Washington, and was served with process in the Oregon action while he was temporarily in Oregon. He had the right to assume that nothing would be done in the action which was contrary to law; to assume that if a judgment was taken before the expiration of the Washington judgment, it would be limited to the life of that judgment, and that if no judgment was taken before the Washington judgment expired, the action would be dismissed. No man is bound to presume that his adversary will proceed unlawfully. The case of *Scott v. Ellery*, 142 U. S., 381, is pertinent. Scott, a resident of Iowa, sued Ellery, a resident of New Jersey, in an Iowa court, seeking judgment on a mortgage debt and foreclosure of the mortgage. Ellery appeared and defended. In due course a decree was rendered fixing the amount of the debt, foreclosing the mortgage, and directing sale of the mortgaged premises. At the foot of the decree jurisdiction of the cause was continued, it being provided "that this cause do stand continued until the execution of this decree, and the further order of this court." The mortgaged premises were sold for less than the amount of the mortgage debt, and a judgment for the deficiency was rendered

against Ellery. Before the rendition of the deficiency judgment, Ellery was adjudged a bankrupt and received his discharge in bankruptcy in a bankruptcy court in New Jersey. Scott proved his claim in the bankruptcy proceeding. Ellery had no actual knowledge of the deficiency judgment, and when he learned of it he sued to enjoin its enforcement. It was insisted that the relief sought could not be granted because Ellery had appeared in the cause, the cause had been continued, and therefore he was to be regarded as in court when the deficiency judgment was entered, and to have made no objection thereto. It was held (p. 385) that the bankruptcy proceedings deprived Scott of any right to a deficiency judgment, and that Ellery "was not bound * * to give attention to the suit in Iowa, or to assume that any steps would be taken in the Iowa court that were inconsistent with the statute." Enforcement of the judgment was enjoined.

A case analogous in principle to the foregoing is *Carrington v. Holabird*, 17 Connecticut, 530.

We submit that McDonald had the right to assume that none but a lawful judgment would be taken against him in the Oregon court. His failure to return into Oregon to make a defense after the expiration of the Washington judgment, and the wrongful judgment which in consequence was rendered against him there, were induced by accident, surprise or mistake. His failure to make a defense in the Oregon action was therefore excusable, and as it was, enforcement of the judgment would not be permitted in Ore-

gon. The Washington courts were not required to enforce it if the Oregon courts would not.

While none of the next cited cases is precisely in point, they indicate what is regarded as such accident, surprise, or mistake as will induce the granting of equitable relief against an unjust judgment. *Humphreys v. Leggett*, 9 How., 296; *Metcalf v. Williams*, 104 U. S., 93; *Jones v. Kincaid*, 5 Lea, 677; *Bucki Lumber Co. v. Atlantic Lumber Co.* (C. C. A. 5th Circ.), 116 Fed., 1; *Bibend v. Kreutz*, 20 California, 110; *Joslin v. Coffin*, 6 Mississippi, 539; *Beveridge v. Hewitt*, 8 Illinois Appellate, 467.

III. Oregon Judgment Fraudulent.

In the case at bar, the trial court found that at the time of the trial, and continuously for more than thirty years prior thereto, both Roche and McDonald resided in Spokane County, Washington; that during that entire period Roche knew McDonald, and knew that his residence was in Spokane County; that McDonald had never resided in Oregon or had any property there; that McDonald was served with process in the Oregon action while temporarily in that State; that no step was taken to enforce the Oregon judgment in that State, but it was brought at once into Washington and the present action begun upon it there; and that "the course pursued by him (Roche) is consistent only with the purpose and intention of evading the statute of this State upon the life of a judgment and of obtaining an extension for another six years of the judgment rendered in this court against the defendant (McDon-

ald)." (Record, pp. 8-9.) The findings were adopted by the Supreme Court, and under decisions in analogous cases they establish that Roche's purpose in suing in Oregon and obtaining judgment there was to evade the laws of the State of which he was a citizen, and to deprive a fellow citizen of protection given by its laws. *Wierse v. Thomas* (N. C.), 59 S. E., 58, 59; *Hazen v. Lyndonville Bank* (Vt.), 41 Atl., 1046, 1048; *Keyser v. Rice*, 47 Maryland, 203; *Miller v. Gittings* (Md.), 37 Atl., 372, 374.

When a citizen of a State resorts to the courts of another State for the purpose of evading the laws of his own State, and obtaining an advantage over fellow citizens which is forbidden by those laws, his conduct is fraudulent, and ground for impeachment in the courts of his own State of the proceedings in the foreign courts. In *Cole v. Cunningham*, 133 U. S., 107, the case was this: A citizen of Massachusetts suspended payment. Certain of his creditors, also citizens of Massachusetts, were informed of his suspension, and began actions against him in New York, attaching debts there due him. Subsequently insolvency proceedings were begun in Massachusetts, the purpose of which was to secure an equal distribution of the debtor's property among all his creditors as provided by the laws of Massachusetts. The debtor's assignee obtained an injunction in the Massachusetts courts against the prosecution of the New York action. The case was then brought to this Court under the claim that the judgment of the Massachusetts court was in violation of Article IV, §§1 and 2, of the Constitution.

The Court held that those constitutional provisions did not prevent the impeachment of a judgment or judicial proceedings for "a manifest fraud" (p. 112), and that the injunction was properly issued against the "citizens of Massachusetts, who are seeking to evade the laws of their own State" (p. 134). See also *Dehon v. Foster*, 4 Allen, 545, which was approved and largely quoted from in the cited case.

In *Andrews v. Andrews*, 188 U. S., 14, these facts appeared: Husband and wife were domiciled in Massachusetts. The husband went to South Dakota, took up his residence there, and obtained a decree of divorce for a cause which occurred in Massachusetts, and was not a cause for divorce under its laws. This was forbidden by a Massachusetts statute. Subsequently he returned to Massachusetts, married again, and died there. In probate proceedings it became necessary to determine whether the South Dakota divorce decree was entitled to credit in Massachusetts. The trial court found that the husband "had gone to Dakota for the purpose of obtaining a divorce, in fraud of the law of Massachusetts" (p. 18), and that the divorce was therefore a nullity. The decision was affirmed by the Supreme Judicial Court of Massachusetts, and by this Court.

IV. State of Washington May Compel Its Citizens to Respect Its Laws.

For our final proposition, we submit that the important question in the case is not so much the validity of the Oregon judgment as the power of the State of

Washington over its citizens. Concede, if you please, the intrinsic validity of that judgment. Nevertheless, it was procured by a citizen of the State of Washington for the purpose of evading the laws of his State and to deprive a fellow citizen of a right given by those laws. The constitutional provision that full faith and credit must be given to the judgment of a court of another State does not prevent the State of Washington from defeating the attempt of one of its citizens to evade the operation of its laws through the shallow device of a suit in the courts of Oregon.

As a foundation for the authorities to be hereinafter examined, let us first notice more closely the decision in *Andrews v. Andrews*, 188 U. S., 14. In that case it appeared that a Massachusetts statute provided that if an inhabitant of that Commonwealth should go into another State to obtain a divorce for a cause which accurred in Massachusetts while the parties resided there, or for a cause which would not authorize a divorce by the laws of Massachusetts, the divorce so obtained should be of no force or effect in Massachusetts. Differences arose between husband and wife domiciled in Massachusetts, and thereafter the husband went to South Dakota for the purpose of obtaining a divorce there for a cause which occurred in Massachusetts and which would not authorize a divorce by the laws of that State. He took up his residence in South Dakota and seems to have acquired a *bona fide* residence there, albeit his only purpose in acquiring such a residence was to obtain a divorce for the cause referred to. When permitted by the laws of South Dakota, he

began there a divorce action, serving notice upon his wife, who still remained in Massachusetts, as required by the laws of South Dakota. The wife appeared in the divorce action and filed an answer contesting the husband's right to a divorce. Subsequently, a property settlement was reached, the wife withdrew her appearance, and a decree of divorce was rendered. Thereafter the husband returned into Massachusetts married, and remained there until his death. Upon his death, the first and second wife, each claiming to be the legal widow of the decedent, petitioned to be appointed administratrix of his estate. The courts of Massachusetts, applying the statute heretofore referred to, held that by virtue of it the South Dakota divorce was of no effect in Massachusetts, and therefore that the first wife was entitled to be appointed administratrix. In affirming that decision this Court pointed out the abundant authority of a State over its own citizens, and its right to control them in matters of public policy affecting the interests of the State and its citizens. The powers of government in that respect, it was said, were reserved to the States when the Constitution was adopted, and were not controlled by provisions of the Constitution which, read literally, would seem to prevail over them. It was therefore held to be within the power of the State of Massachusetts to make such regulations respecting the marital relation as it might deem to be for the best interests of the Commonwealth and its citizens, and that if in the course of such regulation it thought fit to provide that a judgment of divorce obtained in another State

should not be effective within the State of Massachusetts, if founded upon a cause occurring in Massachusetts between parties there resident, or which was contrary to its laws, it had the power to so provide, and its power in that respect was not curtailed by the constitutional provision required full faith and credit to be given to the judgments of the courts of another State. To quote (pp. 33-34):

> "The provision of the Constitution of the United States in question is section 1 of article IV, providing that 'Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State.' The argument is that, even although the Massachusetts statute but announces a rule of public policy, in a matter purely local, nevertheless it violates this clause of the Constitution. The decree of the court of another State, it is insisted, and not the relation of the parties to the State of Massachusetts and their subjection to its lawful authority, is what the Constitution of the United States considers in requiring the State of Massachusetts to give due faith and credit to the judicial proceedings of the courts of other States. This proposition, however, must rest on the assumption that the Constitution has destroyed those rights of local self-government which it was its purpose to preserve. It, moreover, presupposes that the determination of what powers are reserved and what delegated by the Constitution is to be ascertained by the blind adherence to mere form in disregard of the substance of things. But the settled rule is directly to the contrary. Reasoning from analogy, the unsoundness of the proposition is demonstrated. Thus, in enforcing the clause of the Constitution forbidding a State from impairing the obligations of a contract, it is settled by the decisions of this court, although a State, for adequate consideration, may have executed a contract sane-

tioning the carrying on of a lottery for a stated term, no contract protected from impairment under the Constitution results, because disregarding the mere form and looking at substance, a State may not, by the application of the contract clause of the Constitution, be shorn of an ever inherent authority to preserve the public morals by suppressing lotteries. State v. Mississippi, 101 U. S. 814; Douglas v. Kentucky, 168 U. S. 488. In other words, the doctrine is, that although a particular provisions of the Constitution may seemingly be applicable, its controlling effect is lim ited by the essential nature of the powers of government reserved to the States when the Constitution was adopted."

Further on, it was said (pp. 37-38):

"As the State of Massachusetts had exclusive jurisdiction over its citizens concerning the marriage tie and its dissolution, and consequently the authority to prohibit them from perpetrating a fraud upon the law of their domicil by temporarily sojourning in another State, and there, without acquiring a bona fide domicil, procuring a decree of divorce, it follows that the South Dakota decree relied upon was rendered by a court without jurisdiction, and hence the due faith and credit clause of the Constitution of the United States did not require the enforcement of such decree in the State of Massachusetts against the public policy of that State as expressed in its statutes."

In principle, the case at bar is like the cited case. It may be conceded that the State is more nearly concerned with the marital status and all questions relating thereto than it is with the property rights and liabilities of its citizens. But it cannot be questioned that a State may, as between its citizens, when no con-

tractual obligation is impaired, prescribe upon what terms judgments will be granted, the incidents of judgments, and the term of their existence, and forbid one of its citizens who holds such a judgment from making any other use of it than is permitted by its laws. When the State of Washington granted Roche's assignor judgment against McDonald, it did so on condition that the judgment should have life for six years, and no longer, and that at the end of that time it should become extinct and effect should not be given to it beyond that period in any manner. It is needless to inquire whether the State could, even as to one of its own citizens, forbid him to make use of such a judgment beyond the borders of the State in the event that the courts of another State would grant him permission to use it to effect therein. We are only concerned with the question whether the State of Washington had the power to say that within its own borders one of its citizens should not flout its laws and enforce a judgment which, under those laws, was dead. The question is not one, we submit, of the State of Washington denying effect to the Oregon judgment, but of the State of Washington saying to its citizen, Roche, that he should not make use of a judgment obtained in another State for the purpose of defeating the laws of Washington.

That a State has the power to prevent one of its citizens making use of the courts of another State to defeat the laws to which he is subject is established by an overwhelming preponderance of authority. Perhaps the leading case upon that subject is *Dehon v.*

Foster, 4 Allen, 545. It appeared that a Massachusetts firm became insolvent and a Massachusetts creditor attached in Pennsylvania a debt there owing to the insolvents. At the suit of their assignees, a Massachusetts court enjoined the creditor from prosecuting the attachment proceeding in Pennsylvania. Holding that the injunction was rightfully granted, it was said of the power of the court to enjoin a foreign action (p. 550):

> "The authority of this court as a court of chancery, upon a proper case being made, to restrain persons within its jurisdiction from prosecuting suits either in the courts of this State or of other States or foreign countries, is clear and indisputable. In the exercise of this power, courts of equity proceed, not upon any claim of right to interfere with or control the course of proceedings in other tribunals, or to prevent them from adjudicating on the rights of parties when drawn in controversy and duly presented for their determination. But the jurisdiction is founded on the clear authority vested in courts of equity over persons within the limits of their jurisdiction and amenable to process, to restrain them from doing acts which will work wrong and injury to others, and are therefore contrary to equity and good conscience. As the decree of the court in such cases is pointed solely at the party, and does not extend to the tribunal where the suit or proceeding is pending, it is wholly immaterial that the party is prosecuting his action in the courts of a foreign State or country. If the case stated in the bill is such as to render it the duty of the court to restrain a party from instituting or carrying on proceedings in a court in this State, it is bound in like manner to enjoin him from prosecuting a suit in a foreign court. 2 Story on Eq. §§ 899, 900. Mackiltosh v. Ogilvie, 3 Swanst. 365, n., & 4 T. R. 1093, n. Carron Iron Co. v. Maclaren, 5

H. L. Cas. 416, 445. Maclaren v. Stainton, 16 Beav. 286. Massie v. Watts, 6 Cranch, 158. Briggs v. French, 1 Sumner, 504. Dodson v. Pearce, 4 Duer, 142; S. C. 2 Kernan, 156. All that is necessary to sustain the jurisdiction in such cases is, that the plaintiff should show a clear equity, and that the defendant should be subject to the authority and within the reach of the process of the court."

Of the exercise of the power in the case before the court, it was said (p. 552):

"Now it is clear that the act of the defendants in causing the property of the insolvent debtors to be attached in a foreign jurisdiction tends directly to defeat the operation of this law in its most essential features. It prevents a portion of the property of the debtors from coming to their assignees to be equally distributed among their creditors, and gives a preference to certain of their creditors, by which they will obtain payment of their debt in full. It is therefore an attempt by those creditors, citizens of this state, to defeat the operation of our laws, to the injury of the other creditors of the insolvents. This is manifestly contrary to equity. The defendants, being citizens of this State, are bound by its laws. They cannot be permitted to do any acts to evade or counteract their operation, the effect of which is to deprive other citizens of rights which those laws are intended to secure. Certain it is that they could not in any manner or by any process take from the assignees of an insolvent debtor property belonging to him within this State, and appropriate it to the payment of their debt in full. To prevent such appropriation, if the law furnished no adequate and complete remedy, this court would interfere by suitable process in equity. We are unable to see any reason for withholding such interference, merely because our citizens seek to accomplish the same purpose by resorting to a

foreign jurisdiction, and with the aid of the laws of another State or country. An act which is unlawful and contrary to equity gains no sanction or validity by the mere form or manner in which it is done. It is none the less a violation of our laws, because it is effected through the instrumentality of a process which is lawful in a foreign tribunal. By interposing to prevent it, we do not interfere with the jurisdiction of courts in other States, or control the operation of foreign laws. We only assert and enforce our own authority over persons within our jurisdiction, to prevent them from making use of means by which they seek to countervail and escape the operation of our own laws, in derogation of the rights and to the wrong and injury of our own citizens."

In *Cole v. Cunningham*, 133 U. S., 107, this Court cited and followed the Dehon Case in sustaining the right of a Massachusetts court to enjoin a citizen of Massachusetts from prosecuting an action in New York for the purpose of evading the laws of Massachusetts. In this latter case, the full faith and credit clause of the Federal Constitution was invoked unavailingly by the defendant.

The principle established by the foregoing authorities seems to be accepted in all jurisdictions. *Weaver v. Alabama Ry.* (Ala.), 76 So., 364; *Miller v. Gittings* (Md.), 37 Atl., 372; *Sandage v. Studebaker Bros.* (Ind.), 41 N. E., 380; *Hazen v. Lyndonville Bank* (Vt.), 41 Atl., 1046; *Keyser v. Rice*, 47 Md., 203; *Teager v. Landsley* (Ia.), 27 N. W., 739; *Snook v. Snetzer*, 25 Ohio St., 516; *Wierse v. Thomas* (N. C.), 59 S. E., 58; *Margarum v. Moon* (N. J.), 53 Atl., 179; *Sweeney v. Hunter* (Pa.), 22 Atl., 653; *Moton v. Hull*

(Tex.), 13 S. W., 849; *In re Williams' Estate* (Ia.), 107 N. W., 608; *O'Haire v. Burns* (Col.), 101 Pac., 755; *Gordon v. Munn* (Kan.), 106 Pac., 286; *Von Bermuth v. Von Bermuth* (N. J.), 73 Atl., 1049; *Hawkins v. Ireland* (Minn.), 67 N. W., 73.

In the greater number of the above cited cases, relief was obtained by injunction against the party who was prosecuting in a foreign court an action which he could not have maintained in the courts of his own State, and the proceedings in the foreign court were stayed before judgment was rendered therein. Of course it can make no difference whether relief is sought before or after the rendition of judgment in the foreign court, or whether it is sought by way of injunction or as an equitable defense; at least under the Washington practice, where all distinctions in form between law and equity are abolished, and equitable defenses may be interposed in an action at law. That seems to be everywhere accepted. In *Brown v. Parker*, 28 Wisconsin, 1, suit was brought in Wisconsin upon an Illinois judgment. Answering, the defendant alleged that the judgment was based on a Wisconsin contract which, under the laws of that State, had ceased to exist before the Illinois judgment was rendered, and that the judgment was therefore a nullity. An injunction against the enforcement of the judgment in Wisconsin was prayed and granted. In *Hazer v. Lyndonville Bank* (Vt.), 41 Atl., 1046, suit was brought in Vermont to enjoin attachment proceedings against corporate stock in New Mexico. Pending the suit, the attachment proceedings were prose-

cuted to judgment and the stock was sold. It was held that the jurisdiction of the Vermont court was not thereby defeated, but that upon proper pleadings the Vermont court could render a judgment for damages for the value of the stock which had been wrongfully converted in New Mexico. In *Main v. Field* (Ind.), 40 N. E., 1103, a citizen of Indiana sued a fellow citizen in Kentucky and seized there wages which were exempt under the laws of Indiana. The Indiana courts permitted the debtor to recover from the creditor the amount seized in Kentucky. The same relief was granted in the similar case of *Singer Manufacturing Co. v. Fleming* (Neb.), 58 N. W., 226. In *Kessler v. Kern* (Ind.), 28 N. E., 726, a citizen of Indiana by suit in Kentucky, seized wages of a fellow citizen which were exempt under the laws of Indiana. It was held that the debtor had three remedies available for the wrong done him: (1) Injunction to prevent prosecution of the Kentucky action; (2) An action *ex delicto* to recover damages sustained by the prosecution of the Kentucky action; (3) An action *ex contractu* for money had and received, to recover the money seized in Kentucky. The debtor having sued to recover damages for the seizure, the action was sustained.

McDonald, no doubt, had several remedies available to him. As soon as the Washington judgment had expired, he might have pleaded the Washington law in the Oregon court to prevent the rendition of judgment against him on the extinct judgment. But as held in *Main v. Field, supra*, it was not incumbent

upon him to seek relief in the Oregon courts. He was entitled to rely for protection upon the courts of the State of which both he and Roche were citizens. Had he desired to anticipate matters, he might have applied for an injunction in the Washington courts as soon as the Washington judgment had expired and before the rendition of the Oregon judgment, restraining Roche from taking judgment in Oregon in defiance of the Washington law. But again, it was not necessary that he do this. He did not reside in Oregon and had no property there, and the taking of a judgment in the courts of that State was a mere gesture. He could not suppose that if Roche did take judgment in Oregon he would have the effrontery to bring the judgment into Washington and there attempt to enforce it in the very teeth of the Washington statute. It was not until the judgment was sought to be enforced in Washington that it became a menace to McDonald. It is obvious that when it was so sought to be enforced, McDonald was entitled to the same relief by way of a defense to the action that he would have been entitled to had he defended the Oregon action or sought relief by an independent injunction suit against Roche.

V. The Argument in Roche's Brief.

The argument for Roche proceeds on the assumption that the Washington statute prescribing the life of judgments is one of limitations. From that premise it is argued that the statute of limitations of Oregon, not of Washington, governed the Oregon

suit, and therefore that it is immaterial what the Washington statute prescribed regarding the life of judgments. It is impossible as well as useless to deal with an argument based upon such an utterly erroneous premise.

However, among the decisions cited in the brief there are three which may seem, at least superficially, to be to some extent analogous to the present case. We shall briefly remark upon them in their chronological order.

Christmas v. Russell, 5 Wallace, 290. A promissory note made in Mississippi by a resident of that State was endorsed to a citizen and resident of Kentucky. After the Mississippi statute of limitations had run against an action on the note, the maker thereof, being temporarily in Kentucky, was there sued upon the note by the endorsee. The defendant pleaded the Mississippi statute of limitations and other defenses. Judgment was rendered against him and affirmed by the appellate court of Kentucky. Subsequently, the Kentucky judgment was taken into Mississippi and suit brought upon it. The only defense material to the case at bar was a Mississippi statute which provided that no action should be maintained on any judgment rendered by any court without the State of Mississippi against any person who, at the time of the commencement of the action in which the judgment was rendered, was a resident of Mississippi, in any case where the cause of action would have been barred by any limitation act of Mississippi had the

suit been brought therein. It was held that this statute was not a defense to the action on the judgment.

The cited case is distinguishable from the case at bar in these respects:

(1) The Kentucky action was upon a contract, not a judgment.

(2) The sole defense pleaded in the Kentucky action, so far as concerns the present case, was the Mississippi statute of limitations governing actions upon promissory notes. That was the ordinary limitation statute affecting the remedy, not the right, and consequently was not invocable in Kentucky.

(3) No question was or could be made concerning the validity and enforceability of the judgment in Kentucky.

(4) The jurisdiction of the Kentucky court to render the judgment was unquestioned. The defense made to the action upon the Kentucky judgment in Mississippi was based upon a Mississippi statute which attempted to give extra-territorial effect to the Mississippi statute of limitations governing actions upon contracts made in Mississippi. Of the nature of that statute, this Court said (p. 301):

> "Instead of being a statute of limitations in any sense known to the law, the provision, in legal effect, is but an attempt to give operation to the statute of limitations of that State in all the other States of the Union by denying the efficacy of any judgment recovered in another

> State against a citizen of Mississippi for any cause of action which was barred in her tribunals under that law. Where the cause of action which led to the judgment was not barred by her statute of limitations the judgment may be enforced; but if it would have been barred in her tribunals, under her statute, then the prohibition is absolute that no action shall be maintained on the judgment."

(5) The plaintiff in the Kentucky action was a citizen of Kentucky and there was no suggestion that the action was brought in Kentucky for the purpose of evading the laws of Mississippi.

Fauntleroy v. Lum, 210 U. S., 230. The facts stated in the opinion of this Court are that in an action in Mississippi upon a Missouri judgment, the defendant pleaded that the original cause of action arose in Mississippi out of a gambling transaction in cotton futures; that the defendant refused to pay a claim made against him on account of the transaction, and the controversy was submitted to arbitration; that an award was rendered against defendant and that thereafter, when the defendant was temporarily in Missouri, suit was brought against him on the award; that the Missouri court refused to allow the defendant to show the nature of the transaction and its illegal character under the laws of Mississippi, whereupon the judgment sued upon was rendered against him. Supplementing the facts stated in the opinion by those stated by the State court (32 So. 290), it appears that the defendant's plea upon which the State court based its decision averred that the plaintiff was a resident of Missouri at the time

the Missouri action was begun, and that the reason that the Missouri court refused to permit the defendant to prove the illegal character of the original transaction under the laws of Mississippi was that it held that the award of the arbitrators was conclusive, and the consideration of the award could not be inquired into. Referring to the opinion of the State court, it will be seen that the sole ground of its decision was that as the original transaction was contrary to the public policy of Mississippi, that State would look through all the transmutations which the original transaction had undergone and refuse to give effect to it by any judgment of its courts. It was this ruling which was reversed by this Court.

The cited case is distinguishable from the case at bar in these respects:

(1) The Missouri action was either upon an award of arbitration, as the Missouri court held, or upon the contractual obligation.

(2) The illegality of the original transaction, which was the sole defense pleaded in either the Missouri or the Mississippi action, did not go to the jurisdiction of the Missouri court to render judgment thereon. The Mississippi court does not appear to have construed the statute, and this Court held that the statute went merely to the enforceability of the cause of action and not to the jurisdiction of the court. As said by this Court (pp. 234-235):

> "No doubt it sometimes may be difficult to decide whether certain words in a statute are di-

rected to jurisdiction or to merits, but the distinction between the two is plain. One goes to the power, the other only to the duty of the court. Under the common law it is the duty of a court of general jurisdiction not to enter a judgment upon a parol promise made without consideration; but it has power to do it, and, if it does, the judgment is unimpeachable, unless reversed. Yet a statute could be framed that would make the power, that is, the jurisdiction of the court, dependent upon whether there was a consideration or not."

It will be recalled that the Supreme Court of Washington has held that the Washington statute limiting the life of a judgment goes to the jurisdiction, and that after the extinction of the judgment a court is without power to render judgment thereon.

(3) The decision of the Missouri court that the arbitrator's award foreclosed inquiry into the legality of the original transaction was, at the worst, merely erroneous, and therefore the judgment could not have been impeached in Missouri save, of course, by direct appeal therefrom.

(4) When the Missouri action was brought, the plaintiff was a resident of Missouri. There was no suggestion in either the State court or this Court that the action was brought in Missouri for the purpose of evading the laws of Mississippi, and at any rate the plaintiff was under no obligation to obey the Mississippi laws as would be a citizen of that State.

Kenney v. Supreme Lodge, 252 U. S., 411. This was an action of debt brought in Illinois upon a

judgment recovered in Alabama. The defendant pleaded that the judgment was for negligently causing the death of plaintiff's intestate in Alabama. Relying upon a statute of Illinois which provided that no action should be brought or prosecuted in that State for damages occasioned by death occurring in another State in consequence of wrongful conduct, the Illinois court held that as the original action could not have been maintained in Illinois, a suit upon a judgment based upon that cause of action could not be maintained in Illinois. It did not appear that either of the parties was a citizen of Illinois, and the validity of the judgment in the state where it was rendered was not questioned.

This decision requires the briefest of comment. The Illinois court construed the statute of Illinois to withhold jurisdiction from the courts of Illinois in the prohibited cases, and upheld the validity of the statute by reference to *Anglo American Provision Co. v. Davis Provision Co.*, 191 U. S., 373. The decision of this Court was that the cited case was inapposite because it dealt with the power of a foreign corporation to sue, and that Illinois could not withhold jurisdiction of its courts over an action based upon a judgment of another State.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 38—October Term, 1927.

John H. Roche, Plaintiff in Error, vs. D. K. McDonald.	In Error to the Supreme Court of the State of Washington.

[January 3, 1928.]

Mr. Justice Sanford delivered the opinion of the Court.

This writ of error is brought to review a judgment of the Supreme Court of the State of Washington which is challenged on the ground that the full faith and credit prescribed by § 1 of Art. IV of the Constitution was not given to a judgment of a court of the State of Oregon on which the plaintiff in error relied. As this does not present a ground for the writ of error under § 237 (a) of the Judicial Code, as amended by the Jurisdictional Act of 1925,[1] this writ is dismissed for want of jurisdiction. But since the papers show adequate reason for invoking a review by a petition for certiorari, that writ is granted,[2] and we proceed to the consideration of the case on the merits.

The parties to this suit have been for many years residents of Washington. On June 24, 1918, one Dart recovered a judgment for $12,500 against McDonald in a superior court of Washington. In February, 1924, Dart assigned this judgment to Roche. In March, McDonald being then temporarily employed in Oregon, Roche brought suit against him upon this judgment in a circuit court of that State. He was personally served with a summons, appeared and demurred to the complaint. This demurrer was overruled. He then elected to plead no further and did not answer the complaint. Subsequently, in October, 1924—more than six years after the rendition of the Washington judgment—judgment

[1] 43 Stat. 936, c. 229, printed as an Appendix to the Revised Rules of this Court, 266 U. S. 637.

[2] Sec. 237(c) of the Judicial Code, as amended.